

December 7, 2016

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BY E-MAIL and E-FILING-URGENT

Gary Shinnars, Esq.
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20003

Re: Duke University
Case No. 10-RC-187957
(Special Appeal from Regional Director's Denial of a Reasonable Briefing Schedule)

Dear Mr. Shinnars:

As you may recall, we represent Duke University ("Duke" or the "University") in the matter identified above, in which Service Employees International Union ("SEIU" or the "Union") has petitioned to represent PhD students enrolled in the Duke Graduate School who provide instructional and research services as part of their doctoral course of study. This is a Special Appeal from a ruling of the Regional Director's denying more than seven (7) days from the close of the hearing in which to file a brief. A minimum of two (2) weeks from the close of the record is required.

The petition was filed by SEIU on November 10, 2016, and a hearing began on November 28. The hearing closed today after eight days of testimony and argument. The record is lengthy, consisting of approximately 1,200 pages of transcript and numerous exhibits. Much of the transcript remains to be received despite having been ordered and paid for on an expedited basis. Without the transcript, the University will be seriously hampered in its efforts to brief the issues. In any event, the seven (7) days that have been allowed is simply insufficient considering the significant issues addressed at hearing.

This is not a case like any other. It should not be treated as such with respect to briefing, not after eight days of hearing. The central issue in this case involves the employee status of graduate assistants, probably among the foremost labor relations issues of the day.¹ As you know, it has been subject to fierce litigation over the last 15-20 years, resulting in conflicting decisions by different Boards, most recently in *Columbia University*, 364 NLRB No. 90 (2016). The issue has yet to be addressed by any Circuit Court and could be decided by the Supreme Court at some not-too-distant point in time, perhaps in this case. It also could be revisited by the

¹ The eligibility formula and mechanics of the election are additional issues.

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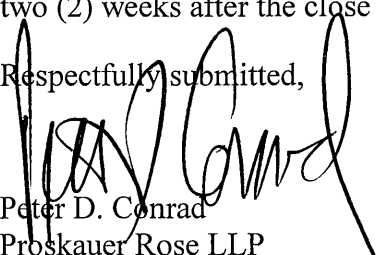
new Trump-appointed Board. The importance of the issue to Duke and thousands of other colleges and universities around the country cannot be overstated.

Having granted the University's Offer of Proof on November 29, the Regional Director thereby indicated that he believed the record made by the University to be worthy of serious consideration. We note that although Petitioner filed a Special Appeal from the Regional Director's ruling on the University's offer, the Board has not acted on that appeal, but rather has allowed the Regional Director's ruling to stand and a record to be made over the course of the last week.

Under all the circumstances, the University is being short-changed on the briefing schedule. It respectfully requests that the due date be extended to two (2) weeks from the close of hearing, or such other date as the Board deems just and proper. Although Petitioner has objected to more than one (1) week to file a brief, it has failed to support that opposition with evidence that any harm will follow from the modest extension of the briefing schedule requested here. The current semester has ended and no election is likely to be conducted in this case, if at all, until the next semester.

Accordingly, the Board should grant this Special Appeal and extend the due date for briefs until two (2) weeks after the close of the hearing or December 21, 2016. Thank you very much.

Respectfully submitted,



Peter D. Conrad
Proskauer Rose LLP
Attorneys for Duke University

cc: Mr. Claude T. Harrell, Jr., Regional Director
Ms. Jenny Dunn, Hearing Officer
Narendra Ghosh, Esq.
Patrick Bryant, Esq.
Paul Salvatore, Esq.
Steven J. Porzio, Esq.